

VZCZCXRO1637
RR RUEHAO
DE RUEHTC #2060/01 3480724
ZNY CCCCC ZZH
R 140724Z DEC 07
FM AMEMBASSY THE HAGUE
TO RUEHC/SECSTATE WASHDC 0819
INFO RUEHLB/AMEMBASSY BEIRUT 0218
RUEHAO/AMCONSUL CURACAO 0305
RUEHBS/USEU BRUSSELS 0611
RUCNDT/USMISSION USUN NEW YORK 4356
RUEHPS/USOFFICE PRISTINA 0635
RUEHGV/USMISSION GENEVA 1395

C O N F I D E N T I A L SECTION 01 OF 03 THE HAGUE 002060

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E.O. 12958: DECL: 12/09/2017

TAGS: [PREL](#) [PHUM](#) [KV](#) [EU](#) [UN](#)

SUBJECT: NETHERLANDS/KOSOVO: LEGAL ADVISER BELLINGER SWAYS
DUTCH

REF: A. STATE 165486

[1](#)B. USUN NEW YORK 1070

[1](#)C. THE HAGUE 2044

[1](#)D. THE HAGUE 1990

[1](#)E. THE HAGUE 1902

[1](#)F. THE HAGUE 1493

Classified By: DCM Michael F. Gallagher FOR REASONS 1.4(B) AND (D)

[1](#)1. (C) SUMMARY: On December 10, 2007, Legal Advisor John Bellinger and Ambassador Roland Arnall met with Dutch MFA Deputy Director General Wim Geerts. Geerts and Bellinger focused on Kosovo, with Geerts indicating that a statement by UNSYG Ban in favor of an international presence there could address Dutch concerns about supporting a post-KFOR mission (para 3-6). Bellinger explained U.S. frustration with the EU's position on the International Criminal Court (ICC)(para 7-8). Bellinger and Geerts also reviewed future cooperation on the legal regime surrounding Guantanamo and terrorist detainees, Middle East diplomacy, the status of the Lebanon tribunal, plans for an extension of the Status of Forces Agreement (SOFA) for the Netherlands Antilles and Aruba, and recent controversial statements by former Dutch FM Bot (para 9-15). Embassy The Hague expects the Dutch to reach the right decision on Kosovo (para 16). END SUMMARY.

[1](#)2. (U) PARTICIPANTS:

U.S.

Ambassador Roland Arnall
Legal Adviser John Bellinger
Heather Schildge, Legal Counselor
Eric Falls, Political Officer

Dutch

MFA Deputy DG Wim Geerts
Liesbeth Lijnzaad, MFA, Director, International Law Division
Jos Schellaars, MFA, Deputy Director, Western Hemisphere
Department
Michel van Winden, MFA, Senior Policy Officer, Western
Balkans Division
Reneko Elema, Senior Policy Officer, Human Rights and
Peacebuilding Department
Jeroen Boender, MFA, Policy Officer, Political Affairs
Division
Fabio Rossi, MFA, Policy officer, Permanent Representation to
the ICC

KOSOVO, SERBIA

13. (C) Geerts noted that the Dutch stand out on two positions regarding the Balkans. First, on Kosovo, the Dutch are not convinced that UNSC resolution 1244 will still be valid after a Kosovar declaration of independence. A new UNSC resolution is the best solution, but without that, the UNSYG should say that "1244 stands." The second Dutch concern relates to Serbia: the Dutch will not ratify a Stabilization and Association Agreement (SAA) until the Serbs hand over fugitive Ratko Mladic.

14. (C) On Kosovo, Bellinger noted that 1244 is not a legal impediment to independence and that it provides an adequate legal basis for continuing international civil and security presences in Kosovo. Key allies, including France, Germany, Italy and Denmark, agree on that point. Bellinger asked if Dutch concerns could be addressed if the EU expressed a willingness to provide a continued civil and security presence in Kosovo, which would then be welcomed by the UNSYG along with a UNSYG statement that "1244 authorizes" such a presence. Bellinger also emphasized that the United States wants the international response to Kosovo to be coordinated among the Kosovars, the EU, the United States, and the UN. The United States wants to avoid delays due to upcoming elections in the region.

15. (C) Geerts thought the proposed UNSYG statement would "do the trick" for the Netherlands, and help address domestic political concerns. On the issue of independence, Geerts emphasized that he could not say so publicly, but he did not "deem it thinkable" that the Dutch would fail to recognize a declaration of independence by Kosovo (i.e. the Dutch will

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recognize Kosovo's independence). However, it's a question of timing -- the Dutch "will not be with the first group" to recognize a Kosovar declaration of independence. The NATO ministerial discussion of Kosovo helped reduce differences and get rid of sharp edges among allies. However, Geerts asked that Bellinger, if asked by the press, note that the Dutch are examining 1244 as the legal basis for action in Kosovo, and that the Dutch will decide "when they want" about how to address the Kosovo issue publicly. Bellinger agreed, and noted that the United States has asked the Kosovars to hold off a declaration of independence until at least mid-January.

16. (C) On Serbia, Geerts noted it would help if the United States would pressure the Serbs and also make clear that the Dutch will not ratify an SAA until they have Mladic. Bellinger noted that while the United States is looking for "sweeteners" to encourage Serbia not to oppose Kosovar independence, the Serbs do not seem to have responded. In any case, the United States will continue to push for Mladic to be brought to justice.

ICC COOPERATION

17. (C) Bellinger noted that the Dutch Permrep told USUN Ambassador Wolff that the U.S. statement on the UNGA Resolution on the ICC appeared to be a "statement of war" (reftel B). In fact, the United States was making a "strong statement of disappointment." The United States has worked hard for three years to move toward a pragmatic approach to the ICC, but there has been no corresponding effort by allies. On the UNGA resolution, the EU had responded to U.S. compromise language with a message that there was "no room for compromise." The U.S. statement is not a closed door, but we've gone as far as we can. If there is to be movement, it will have to be on the side of the ICC supporters. Bellinger opined that if the ICC supporters want non-parties to cooperate with them regarding the ICC, they are going to have to accommodate the legitimate concerns of

non-parties.

¶8. (C) Geerts stated that he was not aware of the Dutch ambassador's comments and was not closely involved in the matter. Ms. Lijnzaad expressed regret that negotiations had come to the point of the U.S. statement on the ICC, but defended the Dutch approach as coordinator, stating that more than 100 nations cosponsored the resolution. Because the resolution was essentially a political statement, it was simply too much to expect that language affirming the rights of non-Parties could be included. The Dutch appreciate U.S. efforts to cooperate with the ICC, especially in the case of Darfur. As coordinator for the resolution, however, "there's a limit to what you can do."

MIDDLE EAST

¶9. (C) Geerts expressed Dutch appreciation of the Annapolis conference. FM Verhagen will represent the Dutch at the Paris conference later this month. Geerts also thanked Bellinger for U.S. efforts at the Geneva International Red Cross/Crescent conference to resolve the matter of ambulance access to the Palestinian territories. The Dutch hope the solution on ambulances will be durable. The Dutch said that more good news stories, such as that on Palestinian flower exports, are needed.

¶10. (C) Bellinger emphasized the Secretary's personal involvement and commitment to the Middle East peace process. In Geneva, the resolution on ambulance access was a positive surprise, with Israelis and Palestinians sitting down together to resolve the matter.

GUANTANAMO/DETAINEES

¶11. (C) Bellinger noted that ongoing discussions on terrorism, human rights and humanitarian law -- bilateral, at international conferences, through the EU Council Working Group on Public International Law (COJUR) -- are bearing fruit. It is a difficult issue because trying to explain the gaps in humanitarian law allows critics of the United States

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to question our motives. However, there is now a much better understanding of terrorism and the related gaps in international law. Germany is debating whether to criminalize terrorist training and preparation overseas. Gathering evidence in these situations is often extremely difficult. Some governments are looking at preventive detention laws, although there has been a sad history of abuse. Nonetheless, we need measures to prevent terrorism before it happens.

¶12. (C) Geerts said FM Verhagen wants to continue the "Leiden process" in 2008 by bringing together "experts from different walks of life" to work on: an international definition of terrorism, the use of intelligence evidence in terrorism trials, evaluation of existing legal assistance treaties, the relation between human rights and humanitarian law, and the possibility of bringing terrorists before the ICC. The FM wants "to keep thinking about this." (NOTE: The Netherlands supported a conference in April 2007 at Leiden University to examine these issues. END NOTE.)

LEBANON TRIBUNAL

¶13. (C) Geerts said the Dutch are pleased with the progress in setting up the Lebanon Tribunal, including the initialing of a draft Headquarters agreement with the UN. He noted Dutch concerns that the Netherlands not be asked to enforce

sentences. Bellinger thanked Geerts for the Dutch contribution, opined that the United States would probably not be the right place for sentence enforcement, but that it was disappointing that other European countries were not more supportive.

SOFA FOR NETHERLANDS ANTILLES AND ARUBA

¶14. (C) Geerts indicated that the Dutch support renewal of the SOFA on a multi-year basis.

INTERVIEW BY FORMER DUTCH FM BOT

¶15. (C) Geerts stated that FM Verhagen was very unhappy with comments by former Dutch FM Bot in a newspaper interview over the weekend. Both Verhagen and Prime Minister Balkenende disagree with the comments, find them inappropriate and have made that clear to Bot. (NOTE: Among other things, Bot said America was "no longer an ally with whom I like to be associated," doubted the need for a missile defense shield, and expressed skepticism about U.S. detention policy. The bulk of his criticism, however, was directed at his former boss, PM Balkenende, whom he accused of stifling debate within Cabinet and "muzzling" the Foreign Minister. Balkenende and FM Verhagen vigorously rejected Bot's comments in the press. END NOTE.)

COMMENT

¶16. (C) The Dutch concerns about Kosovo and UNSC resolution 1244 are not new (reftels C-F), but Geerts' statements to Bellinger are the most forthcoming statement that we have seen from the Dutch. As with Afghanistan, the Dutch have a unique timeline for reaching a decision on Kosovo driven largely by domestic politics. The 2007 governing coalition accord explicitly bars the international deployment of Dutch forces without international authorization and specific guarantees. This is largely a reaction to the 1995 massacre in Srebrenica, an event which still makes the Dutch extremely cautious about international deployments and the Balkans in general. That said, the overriding Dutch desire for EU consensus means they are unlikely to stand alone once a common European position begins to emerge. Having UNSYG clarification that 1244 provides an appropriate legal basis for an international civil and security presence will help the Dutch support a deployment. END COMMENT.
Arnall